

September 27, 2018

VIA EMAIL AND ECF FILING

Honorable Shelley C. Chapman
United States Bankruptcy Court
One Bowling Green
New York, New York 10004

Re: MacGreevey v. NYAM LLC - Adv. Pro. No. 17-01101 (SCC)

Dear Judge Chapman:

We write in response to Plaintiff's request (the "Request") for a pre-motion conference prior to filing a motion for summary judgment dismissing Defendant's second affirmative defense, which was submitted via ECF on September 18, 2018 (Adv. Pro. Dkt. No. 19).

As a preliminary matter, the Plaintiff's Request is premature as fact discovery will not be complete until October 31, 2018, pursuant to the Amended Pretrial Order (Adv. Pro Dkt. No. 18). Further, Defendant intends to serve additional written discovery on the Plaintiff in the coming days, which responses we expect will support the very affirmative defense that Plaintiff is prematurely seeking to dismiss. Accordingly, we expect the additional discovery to clarify any material facts that remain in dispute.

Plaintiff has a fundamental misunderstanding of the underlying proof of claim it references in its Request. The invoices included in Defendant's proof of claim did not qualify for assignment to Plaintiff's third-party factor and are therefore owed directly to NYAM by BCBG.¹ In the unlikely event that Plaintiff is not convinced that mutuality exists between NYAM and BCBG at the conclusion of fact discovery, we believe any issues related to mutuality are better addressed at trial, as Your Honor suggested at the May 23rd preliminary conference.

Should you have any questions regarding the above, please do not hesitate to contact me.

Sincerely,



Michael D. Hamersky

cc: Beth Levine, Esq.

¹ Defendant's third-party factor, Hana Financial Inc., has filed its own proof of claim against BCBG for different invoices that were actually assigned to it by NYAM (Proof of Claim No. 1069).